

**ENTERED**

February 21, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

WEST HOUSTON ENT & SLEEP CENTER, §  
PA, §

Plaintiff, §  
VS. §

CIVIL ACTION NO. 4:17-CV-1015

BREITBURN MANAGEMENT COMPANY, §  
LLC WELFARE BENEFIT PLAN, *et al*, §

Defendants. §

**ORDER**

Before the Court is Defendants Breitburn Management Company, LLC Health & Welfare Plan, and Anthem Blue Cross Life and Health Insurance Company's Joint Motion to Dismiss Plaintiff's Complaint (Doc. #9), Plaintiff's Response (Doc. #17), and Defendants' Reply (Doc. #18). Having considered the arguments and the applicable law, the Court denies Defendants' Joint Motion to Dismiss as to the § 1132(a)(1)(B) claim, but conditionally grants Defendants' Joint Motion to Dismiss as to the ERISA estoppel claim.

Plaintiff has stated a plausible claim for relief in relation to an alleged violation of § 1132(a)(1)(B). The policy at issue clearly covers medically necessary procedures. As such, the real issue before the Court is whether Defendants' determination that the procedure at issue was investigational in nature and not medically necessary was appropriate under the plan. Deciding this issue at the motion to dismiss stage is premature. Accordingly, dismissal is inappropriate.

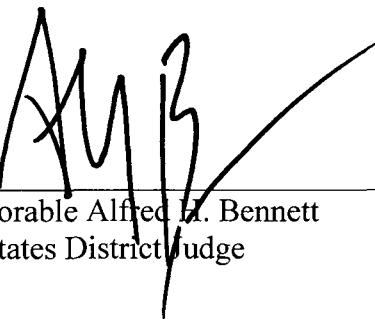
In regard to Plaintiff's ERISA estoppel claim, the Courts finds that Plaintiff has not pled facts establishing a material misrepresentation, reasonable and detrimental reliance upon that representation, or extraordinary circumstances. *See Mello v. Sara Lee Corp.*, 431 F.3d 440, 444–45 & n.4 (5th Cir. 2005) (stating the elements of an ERISA estoppel claim). As such, dismissal

of this claim is appropriate. However, as Plaintiff has not yet filed an amended complaint, the Court will allow Plaintiff to file an amended complaint establishing a factual basis for such a claim within twenty-one (21) days from the date of this Order.

As laid out above, Defendants' Motion to Dismiss is DENIED as to the § 1132(a)(1)(B) claim. As to the ERISA estoppel claim, the Court will allow Plaintiff to file an amended complaint establishing a factual basis for its ERISA estoppel claim within twenty-one (21) days from the date of this Order. If Plaintiff fails to file such a complaint, Plaintiff's ERISA estoppel claim will be dismissed without further order from this Court.

It is so ORDERED.

FEB 21 2018  
Date



The Honorable Alfred L. Bennett  
United States District Judge